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WESTERN DISTRICT OF LOUISIANA

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAKE CHARLES DIVISION

BARBARA REPPOND : CIVIL ACTION 07-1057  
VERSUS : JUDGE MINALDI  
STRATEGIC RESTAURANTS : MAGISTRATE JUDGE WILSON  
ACQUISITION CORP., d/b/a/  
BURGER KING #11544 AND  
JOHN DOE

MEMORANDUM RULING

Before the court is plaintiff's motion to remand. The Magistrate Judge issued a Report and Recommendation recommending denial of the remand. The plaintiff filed objections.

The case was removed to federal court on the basis of diversity jurisdiction. 28 U.S.C. § 1332. The motion to remand alleges that the requisite threshold amount for diversity jurisdiction is not present. The plaintiff and her attorney have stipulated that her damages do not exceed \$ 75,000.<sup>1</sup> The record, together with the subsequently filed stipulation, establishes to a legal certainty that at the time of removal the amount in controversy did not exceed \$ 75,000. *DeAguiar v. Boeing Co.*, 47 F.3d 1404 (5th Cir.), *cert. denied*, 116 S.Ct. 180 (1995).<sup>2</sup>

Without requisite subject matter jurisdiction, remand to state court is not merely discretionary, it is mandatory. 28 U.S.C. § 1447(c).

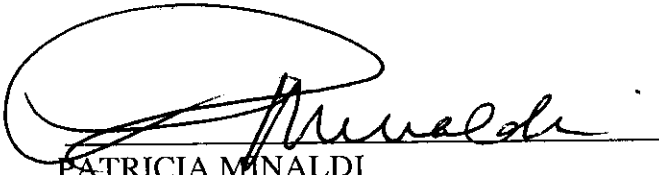
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<sup>1</sup> This stipulation is binding upon the plaintiff upon remand to state court.

<sup>2</sup> The Fifth Circuit permits consideration of affidavits submitted after removal under limited circumstances. *Dow Quimica v. Asociation Nacional de Pescadores*, 988 F.2d 559 (5th Cir. 1993), *cert. denied*, 114 S.Ct. 685 (1994). Those circumstances are present here.

Plaintiffs' motion to remand will GRANTED.

Lake Charles, Louisiana, this 27 day of ~~November~~ <sup>December</sup>, 2007.

  
PATRICIA MINALDI  
UNITED STATES DISTRICT COURT